

CHAPTER VIII - SUBDIVISION CAPITAL IMPROVEMENTS

Chapter Overview

The intent of this chapter is to provide standards by which the subdivider shall execute their respective responsibilities and guarantee proper construction and completion of subdivision improvements in accordance with the [Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA](#) (“MSPA”). This chapter covers the installation, review, and approval of capital improvements within and leading to a subdivision. The purpose of this chapter is to establish:

- What capital improvements must be installed by the subdivider prior to final plat approval;
- What capital improvements may be installed by the subdivider after final plat approval if secured by a Subdivision Improvements Agreement and financial guarantee;
- The process for the governing body to provide final review and approval of capital improvements related to new subdivisions;
- How Subdivision Improvements Agreements and financial guarantees are to be administered;
- Considerations for phasing a subdivision to reduce the amount of up-front capital expenditures; and
- How to assess what offsite capital improvements are necessary to serve a subdivision and can be required of a developer as part of the subdivision approval process.

VIII-A Required Improvements

1. General Requirements

The subdivider shall complete all capital improvements required by the governing body and these regulations following preliminary plat approval but prior to final plat approval, or enter into a Subdivision Improvements Agreement with the governing body.

2. Improvements Installed Prior to Final Plat

The following improvements are required to be 100% completed prior to final plat approval:

- a) Physical access to the subdivision and to each lot shall be constructed to the sub-grade standards established in Chapter VII - F or pursuant to [CITY/COUNTY ROAD STANDARDS](#)) or as otherwise required by preliminary plat conditions of approval;
- b) Bridges and culverts shall be constructed to the standards established in Chapter VII-F or [CITY/COUNTY ROAD STANDARDS](#) or as otherwise required by preliminary plat conditions of approval;
- c) All temporary roads shall be adequately sloped and drained to prevent road deterioration until road and final storm-water drainage facilities have been completed;

Chapter 8 – Subdivision Capital Improvements

- d) All directional and traffic control signage shall be installed;
- e) Water supply systems (other than individual supply on individual lots) shall be completely installed as approved by [MONTANA DEQ or INSERT NAME OF CITY PROVIDING THE WATER];
- f) Wastewater treatment systems (other than individual systems on individual lots) shall be completely installed as approved by [MONTANA DEQ or INSERT NAME OF CITY PROVIDING THE SERVICE];
- g) Fire protection water supply systems;
- h) Fire protection fuel breaks;
- i) Infrastructure necessary to supply electricity to each lot shall be installed;
- j) If cell service is not available or inadequate, land-line telephone installation shall be provided to each lot; and
- k) Other improvements necessary for public health and safety not listed above but approved by the governing body may also be required to be 100% completed as a condition of preliminary plat approval.

3. Improvements Permitted to be Installed After Final Plat Approval

The following improvements may be completed after final plat approval, provided they are secured with a Subdivision Improvements Agreement and financial guarantee as required in Ch. VIII-C below:

- a) The final surface treatment of roads (gravel or pavement), as permitted by these regulations and secured by an approved Subdivision Improvements Agreement;
- b) All roadside stormwater drainage facilities, including but not limited to the construction of drainage swales, curb and gutter;
- c) Stormwater drainage facilities serving more than one lot, including but not limited to the construction of detention and retention facilities;
- d) Street lighting;
- e) Pedestrian and bike facilities;
- f) Postal service collection units;
- g) Noxious weed management;
- h) Park facilities;
- i) Irrigation improvements;
- j) Required re-vegetation; and
- k) Other improvements not specified above but which are either proposed by the subdivider or required by conditions of approval.

4. Improvements Not Required

The following improvements are not required to be installed by the subdivider:

- a) Individual water supply and wastewater treatment systems;
- b) Driveways serving only one lot; and
- c) Storm water drainage serving only a single lot.

VIII-B Completion of Improvements Prior To Final Plat Approval

1. Preliminary Plat Approval

- a) All improvements shall be built to the applicable design standards set forth in Chapter VII and as otherwise specified by the conditions of preliminary plat approval.
- b) Except upon written approval of the Administrator, no grading, removal of trees or other vegetation, land filling, construction of improvements or other material change, except for purposes of aiding in preparation of final engineering drawings or plans, shall commence on the subject property until the subdivider has received approval of the construction plans and all necessary development approvals.

2. Plans Submitted

- a) Prior to installation of improvements and the final plat application, the subdivider shall submit engineering and construction plans and specifications for all improvements to the Administrator. The subdivider shall also submit copies of the plans and specifications for DEQ approval to DEQ, and a copy of these elements to the Administrator.
- b) With the exception of the improvements identified below, all plans and specifications shall be certified by an engineer licensed in the State of Montana to meet design standards of the subdivision regulations and requirements of conditions of approval.
- c) The following may be certified by a licensed contractor (in place of a professional licensed engineer) to meet the design and construction standards identified in Chapter VII-F or in accordance with the [\[CITY/COUNTY ROAD STANDARDS\]](#).
 - i. Two-Lot Roads
 - ii. Alleys

3. Agency Review

- a) The Administrator shall route the plans to each reviewing agency or service provider for comment, including but not limited to the public works department, local fire department, emergency response authorities, electrical and utility companies, irrigation district, etc.
- b) Agencies shall submit comments to the Administrator within 15 days of receiving the plan materials.
- c) The Administrator shall forward comments to the subdivider, who shall address the comments or make changes to the plans submitted. Any revised documents shall be submitted to the administrator who shall route again for agency review.
- d) This process is repeated until all reviewing agencies have submitted written approval of the final version of the plans and specifications.
- e) Once all reviewing agencies submit written approval of the plans, the Administrator shall provide written notice to proceed to the subdivider.

4. Installation of Improvements

- a) Once the subdivider has received written notice to proceed from the administrator, the subdivider may install improvements in accordance with the approved plans and specifications.
- b) The governing body, Administrator, and approval agencies may inspect any improvements at any time before, during, or after installation.

Chapter 8 – Subdivision Capital Improvements

- c) Field certification of installations at identified stages, identified by the applicable agencies, shall be completed by the engineer (unless another party is designated and approved in the plans).

5. Certification of Completed Improvements

- a) The subdivider shall provide the following to the Administrator for those improvements that require design and certification by a licensed engineer:
 - i. As-built plans drawn based on the original construction plans and profiles. The as-built plans shall show the actual location of all improvements installed, shall clearly designate any and all changes from the approved plans and specifications, and shall bear the signature and seal of the engineer who prepared it.
 - ii. All improvements shall be certified by an engineer as being built in substantial compliance with the approved plans and specifications.
 - iii. The subdivider's engineer shall submit a copy of the field inspection logs along with the certification.
 - iv. If there are no changes in actual installation compared to plans, the engineer shall certify improvements were completed as designed.
- b) For those improvements that were not required to be designed and planned by an engineer, the subdivider shall submit to the Administrator a signed, notarized statement from the construction contractor certifying the installed improvements meet the applicable design standards and conditions of approval. The statement shall include the exact wording of the standards and conditions.
- c) For those improvements requiring agency approval, the subdivider shall submit verification from reviewing agencies and service providers confirming the required improvements have been installed to the agencies' specifications, as indicated by the agency's approval signature on the as-built plans.

6. Governing Body Review

If any improvements are to be dedicated to the public and accepted for maintenance by the governing body, the governing body or its designee shall inspect the improvements prior to dedication and acceptance. In such cases the subdivider shall warranty improvements as being free from defect for a period of one year, during which time the governing body may require the subdivider to make all necessary repairs to bring the improvement to like-new condition in accordance with the specifications of these regulations. A financial guarantee may be required to secure the warranty.

7. Final Approval

Once the installation and as-builts have been approved by all agencies and the governing body, the subdivider may proceed to final plat application. The subdivider may proceed with the process for a Subdivision Improvements Agreement (Ch. VIII-C below) for those improvements that may be completed after final plat approval (identified in Ch. VIII - A(3) above).

VIII-C Subdivision Improvements Agreement Process

Improvements that are not essential to public health and safety and human habitation may be completed after final plat approval if secured with a Subdivision Improvements Agreement and financial guarantee.

Chapter 8 – Subdivision Capital Improvements

The Subdivision Improvements Agreement is a contract between the subdivider and the governing body designed to document the outstanding improvements, establish the estimated cost and timeframe for completing the improvements, and provide a mechanism and financial security for the governing body to install the improvements in the event the subdivider fails to install them. A model Subdivision Improvements Agreement is provided in the Supplemental Administrative Materials¹.

¹ As noted in Ch. I-K, Jurisdictions will adopt regulations to suit their local needs. Many Montana governmental units post Subdivision Regulations, forms and Supplemental Administrative Materials to their websites. For additional examples of Supplemental Administrative Materials, please contact the Community Technical Assistance Program at DOCCTAP@mt.gov.

1. Required List of Improvements and Cost

- a) The subdivider shall submit a list of remaining improvements and cost estimates for improvements not necessary to protect public health and safety (as permitted in Ch. VIII-A(3).
- b) The improvement plans and specifications require agency approval pursuant to Ch. VIII-B(3) above. The governing body shall not enter into a Subdivision Improvements Agreement until all DEQ and other federal, state and local approvals are obtained.
- c) The cost of the improvements shall be determined by the subdivider's engineer providing an itemized list of all outstanding improvement costs, including all labor, equipment, materials, insurance and other necessary items.
- d) The Administrator shall determine if all remaining improvements qualify and are addressed by the Subdivision Improvements Agreement.
- e) The governing body may require a second estimate of the cost of improvements. The cost of obtaining a second estimate shall be borne by the subdivider.

2. Length of Agreement

The length of time of the agreement shall be determined by the governing body but shall not to exceed 12 months with the option for extension. A request for an extension must be submitted in writing to the Administrator no less than one month prior to the end of the initial 12-month period. Up to two six-month extensions may be allowed.

3. Review Process

- a) The [CITY/COUNTY] Attorney shall review the Subdivision Improvements Agreement and provide comments and recommendations to the governing body.
- b) The Administrator shall review the Subdivision Improvements Agreement to determine if all remaining improvements are addressed sufficiently.
- c) The governing body may also review or appoint a designee for additional review.
- d) Once the Subdivision Improvements Agreement, list of improvements, amount, and form of the financial guarantee are sufficient for approval by the governing body, the administrator shall provide written notice to the subdivider.

4. Final Plat Application

The subdivider shall submit the final plat application, including the Subdivision Improvements Agreement and required financial guarantee, for consideration by the governing as part of the final plat approval process.

5. Partial Installation of Improvements

- a) Once the subdivider has received final plat approval, the subdivider may proceed to install improvements in accordance with the approved plans and specifications.
- b) If the Subdivision Improvements Agreement has specifically provided for sequential partial installation of improvements and release of funds, the subdivider shall submit as-built plans and certifications as required in Ch. VIII-B(4) and (5).
- c) The governing body, Administrator, and approval agencies may inspect any improvements at any time before, during, or after installation.
- d) Field certification of installation at identified stages shall be completed by the engineer unless another party is designated and approved in the plans.

7. Administrative Review

Once partial improvements are determined to comply with the requirements of the Subdivision Improvements Agreement and are in compliance with the design standards and applicable conditions of approval, partial release of funds will be made according to the provisions of the Subdivision Improvements Agreement.

8. Completion of Improvements

Once all improvements are completed, the improvements shall be certified according to Ch. VIII-B(5).

9. Final Review and Approval

- a) The same process outlined in Ch. VIII-C(7) and (8) shall be followed for final review and approval.
- b) Once the installation and as-builts have been approved by all agencies and the governing body, the governing body will issue final approval and release of any required financial guarantee(s).

VIII-D Financial Guarantees

Financial guarantees shall comply with the following requirements:

1. Financial guarantees shall be in the form of a certificate of deposit in the name of the governing body, an irrevocable letter of credit redeemable only by the governing body, or cash.
2. The amount of the financial guarantee shall include:
 - a) An amount equal to 125% of the estimated cost of completion of improvements to cover the cost of the governing body having to complete improvements in the event the subdivider does not finish the work. The governing body shall have the discretion to require up to 150% of estimated completion costs during times of rapid inflation of prices of materials, fuel, and labor.
 - b) The governing body will retain 15% of the financial guarantee to cover an anticipated one-year warranty period after work has been completed and approved.
3. The expiration of the financial guarantee shall not be less than 15 months from the date of approval of the completed improvements.

Chapter 8 – Subdivision Capital Improvements

4. Requests for partial release of the financial guarantee shall only occur after improvements are completed, certified by the subdivider and the subdivider's engineer as being built to the approved specifications, inspected and accepted by the governing body, as-built drawings have been submitted (if applicable), and after the adopted administrative review fee has been paid by the subdivider or withheld from the release payment to the subdivider.
5. Requests for partial release shall only be in amounts such that the financial guarantee will always equal at least the value of the uncompleted work as per the approved cost estimate, plus the administrative fee and the warranty amount.
6. After final completion, certification, inspection, and acceptance of all improvements, and after expiration of the one-year warranty period when no defects are found, the governing body shall return all remaining portions of the financial guarantee to the subdivider along with a letter signifying final completion of the subdivider's obligations.

VIII-E Extending Capital Facilities

1. The subdivider shall design and install all roads, sewer lines, water supply lines, storm drainage, electrical and telephone utilities, fire protection facilities, pedestrian and bicycle facilities and easements necessary to serve the subdivision in accordance with these regulations.
2. The subdivider shall be responsible for 100% of the costs of providing these services to the subdivision but shall not be held responsible for installing improvements that are not directly related to the anticipated impacts of the subdivision or are disproportionate to the anticipated impacts of the subdivision, as determined by the governing body.
3. In the event a subdivider is willing to install improvements with a greater capacity than required by the subdivision, a payback agreement may be developed and administered by the governing body to help the subdivider recover up-front costs.